

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

UNITED STATES OF AMERICA,

Plaintiff,

v.

WILLIE MICKEY,

Defendant.

Case No.: 15cr1201 BTM

**ORDER DENYING MOTION TO
DISMISS INDICTMENT**

On December 17, 2015, Defendant Willie Mickey brought a motion to dismiss the indictment [Doc. 75]. On January 8, 2016, the Court held a hearing on the motion. For the reasons discussed below, Defendant's motion is **DENIED**.

DISCUSSION

Defendant moves to dismiss the indictment on the following grounds: (1) 18 U.S.C. § 1591 is an unconstitutional exercise of federal power under the commerce clause as applied to the facts of this case; (2) the indictment violates the ex post facto clause because it includes means of violating § 1591 that were not criminal at the time of the alleged conduct; (3) 18 U.S.C. § 1591 is unconstitutional due to the lack of mens rea needed for trafficking a minor; and (4) the "reasonable opportunity to observe" language of § 1591(c) is void for vagueness.

1 Defendant's second through fourth grounds for dismissal of the indictment
2 are now moot because on January 7, 2016, the government filed a Second
3 Superseding Indictment, which does not contain charges for violation of § 1591(c)
4 (trafficking a minor) and does not include the language that was the focus of
5 Defendant's ex post facto arguments. At the motion hearing, the government also
6 dismissed the charges of the Superseding Indictment.

7 Accordingly, the sole remaining argument concerns whether § 1591 is a
8 constitutional exercise of commerce clause power as applied this case. Citing to
9 United States v. Lopez, 514 U.S. 549 (1995) and Bond v. United States, ___ U.S.
10 ___, 134 S. Ct. 2077 (2014), Defendant argues that application of § 1591 to the
11 facts of this case, which involve local pimping, would be an overreach of the
12 government's power under the commerce clause. However, in United States v.
13 Walls, 784 F.3d 543, 547-48 (9th Cir. 2015), the Ninth Circuit distinguished both
14 Lopez and Bond in holding that The Trafficking Victims Protection Act ("TVPA"),
15 18 U.S.C. § 1591 et seq., extends to the limits of the commerce clause and that
16 "any individual instance of conduct regulated by the TVPA need only have a de
17 minimis effect on interstate commerce."

18 In Walls, the charges under 18 U.S.C. § 1591 pertained to the recruitment
19 and coercion of women into prostitution within Washington State, not across state
20 lines. Walls argued that that the TVPA should not extend to purely local conduct.

1 In rejecting Walls's argument, the Ninth Circuit looked to the wording of the statute,
2 which includes the language "in or affecting commerce," as well as legislative
3 history. Although Defendant argues that the legislative history shows that
4 Congress never intended § 1591 to be used for intrastate activity, the Ninth Circuit
5 found:

6 [T]he congressional findings incorporated into the TVPA clearly
7 demonstrate Congress's intent to enact a criminal statute addressing
8 sex trafficking at all levels of activity, see 22 U.S.C. § 7101(b)(12)
9 (finding that, in the aggregate, sex trafficking "substantially affects
10 interstate and foreign commerce" and "has an impact on the
11 nationwide employment network and labor market"); id. § 7101(b)(14)
12 ("No comprehensive law exists in the United States that penalizes the
13 range of offenses involved in the trafficking scheme."); see also United
14 States v. Todd, 627 F.3d 329, 333 (9th Cir.2010) ("Congress
15 concluded that prostitution in American cities encouraged and
16 enlarged the market for this traffic from abroad."). We therefore hold
17 that when Congress used the language "in or affecting interstate or
18 foreign commerce" in the TVPA, it intended to exercise its full powers
19 under the Commerce Clause.

20 Id. at 547.

The Ninth Circuit explained that Congress has the power to regulate purely
intrastate activities with only a de minimus effect on interstate commerce as long
as the class of activity regulated is economic and has a substantial effect on
interstate commerce. Id. at 548. Because "Congress found that trafficking of
persons has a substantial aggregate economic impact on interstate and foreign
commerce," the Ninth Circuit held that the district court did not err in instructing the
jury that "an act or transaction that is economic in nature" and "affects the flow of

1 money in the stream of commerce to any degree 'affects' interstate commerce."
2 Id. at 548-49.

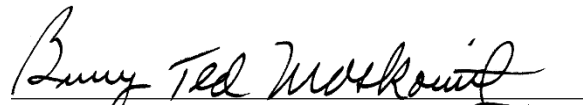
3 This Court is governed by Walls. Defendant's attempts to distinguish Walls
4 are not persuasive. Therefore, the Court holds that 18 U.S.C. § 1591 is a
5 constitutional exercise of federal power under the commerce clause as applied to
6 the facts of this case

7
8 **CONCLUSION**

9 For the reasons discussed above, Defendant's motion to dismiss the
10 indictment is **DENIED**.

11 **IT IS SO ORDERED.**

12 Dated: January 15, 2016

13 
14 Barry Ted Moskowitz, Chief Judge
United States District Court